

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Lieber

February 19, 2003

An act to add Chapter 6.93 (commencing with Section 25430) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as introduced, Lieber. PCE: claims: liability.

Existing law requires hazardous waste facilities to operate under hazardous waste facilities permits issued by the Department of Toxic Substances Control. The department is required to adopt regulations for series A, B, and C standardized permits for offsite non-RCRA hazardous waste treatment or storage facilities. Existing law provides that an offsite facility treating solvents is eligible for a standardized permit if, among other things, the facility exclusively treats solvent wastes and the wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

This bill would enact the California PCE Environmental Cost Recovery Act and would require the owner or operator of a PCE use facility that is currently conducting or intends to conduct dry cleaning operations, and each wholesale distributor of PCE, to register with the board, and to pay an annual registration fee. The bill would authorize a current or prior owner or operator of an abandoned dry cleaning facility or property to register the facility or property site and pay a fee.

The bill would also require each person who sells PCE in this state to pay a fee of \$10 for each gallon of PCE purchased by a dry cleaning facility. The bill would authorize the board on and after January 1, 2006,

to annually adjust the registration fees and sales to ensure viability of the fund. The bill would prohibit any person, after January 1, 2005, from selling or transferring any dry cleaning solvent to any person owning or operating a dry cleaning facility unless the owner or operator of the dry cleaning facility has a certificate of registration.

The bill would require all registration fees and PCE sales fees to be deposited in the PCE (Tetrachloroethelyne) Cost Recovery Fund which this bill would create in the State Treasury. The bill would also require all money appropriated by the Legislature, corrective action costs recovered by the board, gifts, grants, and donations, federal funds and interest earned be deposited in the fund.

The bill would authorize the board to expend the money in the PCE Cost Recovery Fund, upon appropriation by the Legislature, for taking specified actions with respect to a PCE release from a PCE use facility or wholesale distribution facility, including the reasonable and necessary costs of corrective action, enforcement activities, and for administrative expenses related to carrying out the act. The board would also be authorized to expend the money in the fund to pay claims to potentially eligible parties for the reimbursement of necessary corrective action costs incurred by the claimant with regard to a PCE release.

The bill would provide that an owner or operator of a dry cleaning facility or wholesale distribution facility from which there is a PCE release or threatened release is liable for the full costs of any required corrective action or replacement costs, or any corrective action order, directive, notification or approval order issued pursuant to the Porter-Cologne Water Quality Control Act, with regard to that PCE release. The bill would authorize the board to recover these costs from the owner or operator in a civil action and would provide that the standard of liability for any costs of corrective action recoverable pursuant to this bill is strict liability.

The bill would authorize a potentially eligible party, as defined, to file a claim with the board for specified reimbursement corrective action costs and water supply replacement costs with regard to a PCE release. The bill would require the board to review and approve or deny an application for a claim, as specified, and to adopt and annually revise a priority ranking list for awarding claims.

The bill require the board to adopt regulations to implement the act and would prohibit the Office of Administrative Law from repealing



any emergency regulations filed with the Office of Administrative Law on or before January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.93 (commencing with Section 25430) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.93. CALIFORNIA PCE ENVIRONMENTAL COST
RECOVERY ACT

Article 1. Title and Legislative Intent

25430. (a) This chapter shall be known and may be cited as the “California PCE Environmental Cost Recovery Act.”

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient PCE Cost Recovery Fund to provide response for releases of PCE, including spills and disposal that pose a threat to the public health or the environment and that provides for the rapid distribution of cleanup funds that will assist the state’s recovery, it is in the best interest of the public that the State Water Resources Control Board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Section 25465.

(2) It is estimated that approximately ____s of former and existing PCE use facilities exist in the state.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of PCE use facilities in the state have released PCE contamination that poses a threat to the environment and human health and safety. Over 900 public drinking water wells and dozens of communities have been affected by PCE releases from dry cleaning facilities and possibly other PCE use facilities. Property transactions and land redevelopment have been significantly hampered by discovery of PCE contamination at current and abandoned PCE use facilities.

1 Emergency funds and general funds have been insufficient to pay
2 for water replacement costs in the hardest hit communities.

3 (4) In recent years, owners or operators of PCE use facilities
4 and contaminated properties have been unable to obtain sufficient
5 financial resources to pay for corrective action or replacement of
6 drinking water sources.

7 (5) There are long-term threats to public health and water
8 quality if a comprehensive, uniform, and efficient funding
9 program is not established to assist in meeting corrective action
10 requirements.

11 (6) It is in the best interest of the health and safety of the people
12 of the state to establish a fund to pay for corrective action and
13 drinking water replacement costs if insurance coverage or other
14 financial means are not available.

15 (7) An efficient program of establishing corrective action
16 reimbursement funds should encourage corrective action to be
17 taken by the owner or operator of a contaminated PCE use facility.

18 (8) It is in the public interest for the state to provide financial
19 assistance to small businesses that have limited financial
20 resources, to ensure the adequate protection of groundwater and
21 public health.

22 (c) Nothing in this chapter shall be construed as waiving any
23 immunity provided the state or its departments and agencies by the
24 United States Constitution.

25 Article 2. Definitions

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28 25431. Unless the context indicates otherwise, the definitions
29 specified in this article govern the construction of this chapter.

30 25431.5. “Abandoned dry cleaning facility” means any real
31 property premises or individual leasehold space on which a dry
32 cleaning facility formerly operated.

33 25432. “Claim” and “application” means an application to
34 the board for the reimbursement of the costs of taking corrective
35 action for a PCE release.

36 25432.5. “Corrective action” has the same meaning as
37 defined in Section 25299.14, but only with respect to a release of
38 PCE.

1 25433. “Dry cleaning facility” means any commercial
2 facility located in this state that is engaged in onsite dry cleaning
3 operations, other than one of the following:

4 (a) A coin-operated dry cleaning operation.

5 (b) A facility located on a United States military base or owned
6 by the United States, or any state or local agency.

7 (c) A commercial uniform service and/or linen supply facility.

8 25433.5. “Dry cleaning operations” means cleaning of
9 apparel and household fabrics, using one or more dry cleaning
10 solvents, including, but not limited to, those businesses described
11 in Standard Industrial Classification (SIC) Code No. 7216.

12 25434. “Dry cleaning solvent” or “solvent” means any
13 nonaqueous solvent or product used, or intended for use, in the
14 cleaning of garments and other fabrics at a dry cleaning facility,
15 including, but not limited to, all of the following:

16 (a) Dense nonaqueous solvents, including, but limited to, such
17 chlorinated solvents as PCE.

18 (b) Light nonaqueous solvents, including, but not limited to,
19 such petroleum-based solvents as Stoddard Solvent.

20 (c) The products into which all the solvents or products
21 specified in subdivisions (a) or (b) degrade.

22 25434.5. “Federal act” means the Comprehensive
23 Environmental Response, Compensation, and Liability Act of
24 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

25 25435. “Fund” means the PCE (Tetrachloroethelyne) Cost
26 Recovery Fund created pursuant to Section 25440.

27 25435.1. “Impacted third party” means a person who has
28 suffered bodily injury or property damage arising from a PCE
29 release.

30 25435.5. “Operator” means any person responsible for the
31 operation of a dry cleaning facility or in-state wholesale
32 distribution facility or that has an ownership interest in a dry
33 cleaning operation or wholesale distributor.

34 25436. “Operation,” with respect to a dry cleaning facility,
35 means maintaining or management.

36 25436.5. “Owner,” with respect to a dry cleaning facility,
37 means to own part or all of the real property of the facility.

38 25437. “PCE” means tetrachloroethelyne or
39 perchloroethelyne.

1 25437.5. “PCE use facility” means a current or abandoned
2 dry cleaning facility.

3 25438. “Person” means an individual, trust, firm, joint stock
4 company, business concern, corporation, including, but not
5 limited to, a government corporation, partnership, limited liability
6 company, and association. “Person” also includes any city,
7 county, city and county, district, commission, the state or any
8 political subdivision thereof, any interstate body, and the United
9 States and its agencies and instrumentalities, to the extent
10 permitted by law.

11 25438.5. “Potentially eligible party” or “party” means any
12 of the following:

13 (a) The owner or operator of an active dry cleaning facility,
14 abandoned dry cleaning facility, or wholesale distribution facility.

15 (b) The prior owner or operator of an abandoned dry cleaning
16 facility.

17 (c) An impacted third party.

18 25439. “Release” means any spilling, leaking, pumping,
19 pouring, emitting, emptying, discharging, injecting, escaping,
20 leaching, dumping, or disposing of PCE into the environment.

21 25439.1. “Site” means any area, location, or facility where
22 PCE has been released into the environment.

23 25439.2. “Wholesale distributor” means a person or
24 company whose primary business is selling dry cleaning solvents
25 and supplies to in-state or out-of-state dry cleaning facilities. For
26 purposes of this section, “primary business,” means that the
27 percentage of the person’s or company’s gross receipts from the
28 sale of dry cleaning solvents and supplies to the dry cleaning
29 facilities equals or exceeds 20 percent of total gross receipts.

30 25439.6. “Wholesale distribution facility” means a facility
31 or location where a wholesale distributor’s operations are located
32 and that is used for the storage or handling of dry cleaning solvents
33 and supplies.

34 25439.7. For purposes of this chapter, “board,” “regional
35 board,” and “local agency” have the same meanings as defined
36 in Section 25281. Any other term used in this chapter that is not
37 defined by this article has the same meaning as defined in Section
38 25281.

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Article 3. PCE (Tetrachloroethelyne) Cost Recovery Fund

25440. (a) The PCE (Tetrachloroethelyne) Cost Recovery Fund is hereby established in the State Treasury, and the money in the fund may be expended by the board, upon appropriation by the Legislature, for the purposes specified in subdivision (c). The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal years, for taking prompt action in response to any unauthorized release for purposes of paragraph (2) of subdivision (c).

(b) All of the following amounts shall be deposited in the PCE Cost Recovery Fund:

(1) All money recovered by the board pursuant to Section 25460 from a liable owner or operator.

(2) Fees collected pursuant to Article 4 (commencing with Section 25450).

(3) Any appropriations made by the Legislature.

(4) Gifts, grants, and donations intended for deposit in the fund.

(5) Any federal funds made available under similar federal legislation, or any other federal program.

(6) Notwithstanding Section 16475 of the Government Code, all interest earned upon any money deposited in the PCE Cost Recovery Fund.

(c) The board may expend the money in the PCE (Tetrachloroethelyne) Cost Recovery Fund for all of the following purposes:

(1) The reasonable and necessary costs of corrective action with respect to a PCE release from a PCE use facility or wholesale distribution facility, including all of the following:

(A) Enforcement activities.

(B) Corrective action oversight.

(C) Cost recovery.

(D) Relocation of residents and provision of water supplies.

(E) Exposure assessments.

(2) For administrative expenses related to carrying out the activities specified in paragraph (1) and for implementing this chapter.

(3) For transfer to the State Board of Equalization for administrative costs in collecting the fee imposed by Article 4 (commencing with Section 25450).

(4) To pay claims pursuant to Section 25465 for all of the following:

(A) Reimbursement of necessary corrective action costs incurred by the claimant that are required by the regional board or local agency to protect water resources and public health and safety

(B) Any water supply replacement costs that are required by a California regional water quality control board.

(d) The board shall oversee expenditures required to provide administrative support and maximize the funds available for corrective action and minimize the board's administrative expenditures.

Article 4. Fees and Payments to the Fund

25450. The Legislature hereby declares that the fees imposed by this article would not result in the imposition of a tax within the meaning Article XIII A of the California Constitution, because the amount and nature of the fees have a fair and reasonable relationship to the adverse environmental burdens imposed by the sale and use of PCE and there is a sufficient nexus between the fees imposed and the use of those fees to support the funding of corrective action measures, including payment of claims for costs incurred to take corrective action, to releases of PCE.

25451. (a) On or before January 1, 2005, and on or before each January 1 thereafter, the owner or operator of a PCE use facility that is currently conducting, or intends to conduct for all or part of the year, dry cleaning operations shall register the facility with the board.

(b) A current or prior owner or operator of an abandoned dry cleaning facility or property may register the facility or property with the board and pay a fee pursuant to this section.

(c) The owner or operator of a PCE use facility subject to subdivision (a) shall pay the board an annual registration fee in accordance with the fee schedule adopted by the board.

(d) The board shall adopt regulations establishing a fee schedule pursuant to this article in the amount necessary to carry out this article with regard to PCE use facilities.

25452. On and after January 1, 2005, each wholesale distributor shall register with the board and pay an annual

1 registration fee of five thousand five hundred dollars (\$5,500) for
2 each wholesale distribution facility in the state.

3 25453. (a) Each person who sells PCE in this state shall pay
4 a fee of ten dollars (\$10) for each gallon of PCE purchased by a
5 dry cleaning facility.

6 (b) A person who sells PCE subject to the fee shall collect and
7 forward the fee collected to the board on a quarterly schedule
8 established by the State Board of Equalization.

9 25454. All registration fees and PCE sales fees collected
10 pursuant to this article shall be deposited in the PCE Cost Recovery
11 Fund.

12 25455. On and after January 1, 2006, the board may annually
13 adjust the registration fees and sales fee imposed by this article,
14 after providing notice and opportunity for public comment, in a
15 manner necessary and appropriate to ensure viability of the fund
16 and in furtherance of the purposes of this chapter. The board shall
17 not increase the amount of the fees imposed on an abandoned dry
18 cleaning facility in an amount greater than fees imposed on the
19 largest PCE use facility.

20 25456. On and after January 1, 2005, no person shall sell or
21 transfer any dry cleaning solvent to any person owning or
22 operating a dry cleaning facility unless the owner or operator of the
23 dry cleaning facility has conspicuously posted a copy of a valid
24 certificate evidencing registration of the dry cleaning facility
25 pursuant to this chapter at the facility.

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27 Article 5. Liability and Claims
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29 25460. (a) An owner or operator of a PCE use facility or
30 wholesale distribution facility from which there is a release or a
31 threatened release of PCE is liable for the full and total costs of any
32 required corrective action or replacement costs with regard to that
33 release, or any corrective action order, directive, notification or
34 approval order issued pursuant to Division 7 (commencing with
35 Section 13000) of the Water Code with regard to that release.

36 (b) The board may recover the costs specified in subdivision (a)
37 from the owner or operator in a civil action.

38 (c) Except as provided in subdivisions (c) and (d), this section
39 does not deprive a party of any defense the party may have under
40 any other provision of law.

1 (d) The standard of liability for any costs of corrective action
2 recoverable pursuant to this chapter is strict liability.

3 (e) No indemnification, hold harmless, conveyance, or similar
4 agreement is effective to preclude any liability for costs
5 recoverable under this article.

6 (f) The entry of judgment against any party to the action does
7 not bar any future action by the fund against any person who is later
8 discovered to be potentially liable for costs paid from the fund.

9 (g) Payment of any claim by the fund pursuant to this chapter
10 is subject to the state acquiring by subrogation the rights of the
11 claimant to recover those costs of corrective action for which it has
12 compensated the claimant from the person responsible or liable for
13 the PCE release.

14 (h) Except as provided in this section, this chapter does not
15 affect or modify the obligations or liability of any person under any
16 other provision of state or federal law, including common law, for
17 damages, injury, or loss resulting from a release or for a corrective
18 action, or for the costs of a corrective action.

19 25465. (a) A potentially eligible party may file a claim with
20 the board for reimbursement for both of the following:

21 (1) Reimbursement of necessary corrective action costs
22 incurred by the potentially eligible party with regard to a PCE
23 release that are required by the regional board or local agency to
24 protect water resources and public health and safety.

25 (2) Any water supply replacement costs incurred by the
26 potentially eligible party with regard to a PCE release that are
27 required by a California regional water quality control board.

28 (b) A potentially eligible party shall include, in the application
29 for a claim, evidence of payment of any applicable fee required
30 under this chapter. If the potentially eligible party is the current or
31 prior owner or operator of an abandoned dry cleaning facility, the
32 party shall provide evidence that party has elected to register and
33 pay the fee pursuant to subdivision (b) of Section 25451. The
34 board shall review and accept or deny the request for an
35 application for a claim pursuant to the regulations adopted
36 pursuant to Section 25466. The board may reject any claim
37 application and deny eligibility if the board determines that the
38 applicant is in willful noncompliance with this chapter or the
39 regulations adopted pursuant to this chapter or if continued



1 corrective action and incurred costs are not in the interest or
2 maximum benefit to the people of the state.

3 (c) The board shall adopt a priority-ranking list at least
4 annually for awarding claims pursuant to this article. The board
5 shall review any claims for high priority sites and shall first expend
6 funds necessary for corrective action with regard to those sites
7 with money available from the fund.

8 (d) The board shall, upon approval of the application, inform
9 the claimant of the priority ranking of the claim.

10 25466. (a) The board shall adopt regulations to implement
11 this chapter that place a minimum cost burden on the parties,
12 including regulations that do all of the following:

13 (1) Establish a process for submitting claim applications to the
14 board, including forms for applications, methods for determining
15 eligibility for the issuance of a claim, and a process for appealing
16 the board's decisions.

17 (2) Provide standards for prioritizing claims, considering the
18 degree of risk to human health and the environment and other
19 factors that the board may deem appropriate.

20 (b) The Office of Administrative Law shall deem the adoption
21 of any regulations pursuant to this section that are filed with the
22 Office of Administrative Law on or before January 1, 2005, to be
23 an emergency necessary for the immediate preservation of the
24 public peace, health, safety, and general welfare for purposes of
25 Section 11349.6 of the Government Code. Notwithstanding
26 Chapter 3.5 (commencing with Section 11340) of Part 1 of
27 Division 3 of Title 2 of the Government Code, including
28 subdivision (e) of Section 11346.1 of the Government Code, any
29 emergency regulation adopted by the board pursuant to this
30 subdivision shall not be repealed by the Office of Administrative
31 Law, and shall remain in effect until revised by the board.

